

**VIRGINIA BOARD OF DENTISTRY  
MINUTES  
June 12, 2009**

- TIME AND PLACE:** The meeting of the Board of Dentistry was called to order at 9:10 A.M. on June 12, 2009 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.
- PRESIDING:** Meera A. Gokli, D.D.S., President
- BOARD MEMBERS PRESENT:** Jeffrey Levin, D.D.S., Vice-President  
Jacqueline G. Pace, R.D.H., Secretary-Treasurer  
Robert B. Hall, Jr. D.D.S.  
Myra Howard  
Misty Mesimer, R.D.H.  
Augustus A. Petticolas, Jr. D.D.S.  
Darryl J. Pirok, D.D.S.  
James D. Watkins, D.D.S.  
Paul N. Zimmet, D.D.S.
- STAFF PRESENT:** Sandra K. Reen, Executive Director for the Board  
Sandra Whitley-Ryals, Director for the Agency  
Alan Heaberlin, Deputy Executive Director for the Board  
Huong Vu, Administrative Assistant
- OTHERS PRESENT:** Howard M. Casway, Senior Assistant Attorney General
- ESTABLISHMENT OF A QUORUM:** All members of the Board were present.
- PUBLIC COMMENT:** **Thomas B. Padgett, D.M.D.**, President of Virginia Society of Oral and Maxillofacial Surgeons (VSOM), expressed VSOM position on the following issues:
- Guidance Document 60 (the Policy of Administering Schedule II through VI Controlled Substances for analgesia Sedation and Anesthesia in Dental Practice) - VSOM requested the Board to allow RN's and LPN's to administer sedative or anesthesia drugs when under direct supervision of a practitioner who is licensed to give said drugs.
  - Dr. Futerman's Petition for Rulemaking (amending 18VAC60-20-108, 18VAC60-20-120 and 18VAC60-110 and replaces the present guidelines for administering anesthesia with the ADA guidelines) – VSOM feel that the current Virginia Guidelines for this issue are more stringent than the ADA Guidelines and do not think a change is needed.
  - Mr. Haddad's Petition for Rulemaking (amending sections 18VAC60-20-110 and 18VAC60-20-120 - regulating dental

providers who administer sedative and or anesthesia drugs) – VSOM feel that the current Virginia Guidelines for Administering Anesthesia are more than adequate but there is currently no office inspection or anesthesia permits required in the State of Virginia for general dentist who administers sedation and or anesthesia. Dr. Padgett went on to say if the Board decides to implement an inspection process, VSOM ask that Oral Surgeons who are evaluated through AAOMS be exempt.

Dr. Padgett commented that the safety of the patients is VSOM's utmost concern. Dr. Padgett thanked the Board for the opportunity to address these issues and stated that VSOM appreciates the Board's consideration on these important issues.

**Ralph L. Howell, D.D.S.**, president of the Virginia Dental Association (VDA), asked on behalf of the VDA that the Board:

- Be proactive in addressing emerging dentistry delivery models.
- Hold everyone to same standards for practice.
- Corrects inconsistency in regulations such as permitting
  - prescribing antibiotics but not allowing treatment of symptoms known to result from antibiotics
  - administration of Botox for dental treatment but not for cosmetic purposes
- Post a PowerPoint presentation on advertising rules on its webpage similar to the one posted on recordkeeping.

Dr. Howell thanked the board members for the hard work they are doing.

## **APPROVAL OF MINUTES:**

Dr. Gokli asked if the Board members had reviewed the minutes in the agenda package. Dr. Zimmet moved to accept the minutes of the March 12, 2009 meeting. The motion was seconded and carried.

Ms. Mesimer moved to accept the minutes of the March 13, 2009 meeting. The motion was seconded and carried. Dr. Watkins asked that on page 11 in Acupuncture the phrase "Mr. Casway advised that the Board decides if and when acupuncture can be used in dentistry" is correct. Ms. Reen stated that it is correct. Dr. Gokli agreed.

## **DHP DIRECTOR'S REPORT:**

**DHP Performs.** Ms. Ryals reported to the Board on the following issues:

- DHP Performance – Ms. Ryals congratulated the Board members and staff for doing a great job with processing licensure applications, its feedback on customer satisfaction surveys, and for clearing cases in 250 days or less. Ms. Ryals asked Board members and staff to continue efforts to meet or exceed the performance measures.

- Health Practitioner Intervention Program (HPIP) – She noted that the name change of this program to Health Practitioner Monitoring Program (HPMP) will take effect on July 1, 2009.
- Healthcare Workforce Data Center– Ms. Ryals reported that the agency received \$250,000 for start up so the agency has not been using funds from the boards yet. She reported that the supply and demand issues for physicians and nurses were addressed first and that next on the list of professions to be addressed are dentists and dental hygienists. Ms. Ryals asked the Board to designate a representative to participate on the study of dental professions.
- Prescription Monitoring Program (PMP) data breach– Ms. Ryals reported that on April 30 ,2009, there was an unauthorized access to the PMP database so all DHP systems were shutdown immediately. She reported that most systems are back up and that the criminal investigation is still being aggressively pursued. Ms. Ryals stated that there are Questions and Answers handouts available if anyone would like to have a copy. These questions and answers are also available on DHP website. Ms. Ryals reported that the agency has developed scripts and contracted with a call center to answer questions in regard to this matter. Ms. Ryals assured the Board that the agency has been going above and beyond to be responsive to the public.

#### **REPORT ON REVENUE, EXPENDITURES AND CASH:**

**Mark Monson**, DHP Deputy Director of Administration – thanked the Board for the opportunity to discuss its revenue, expenditures and cash. He advised that the Board is responsible for assuring that its revenue covers the expenses incurred and that the Board may be asked to begin the regulatory process to increase fees at its September meeting. Mr. Monson then turned the discussion of the financial reports over to Mr. Giles.

**Charles Giles**, DHP Budget Manager – referred to the DHP Projected Board Revenue, Expenditures and Cash FY09 – FY14 report and stated that based on current information without any organizational changes the projection is that the Board will have over a million dollar deficit at the close of FY 2014. He reported that the reason for the projected shortfall is due to costs which resulted from the agency move to a new location, implementation of record management software – Documentum, increased office space, and the Board staff increase from 3.3 fulltime employees to 6 fulltime employees. Mr. Giles stated that currently 88% of the revenue comes from renewal fees and that the projections do not include the addition of dental assistants. He also commented on the need to anticipate increased costs in areas such as:

- Salaries
- Healthcare
- Lease

- Technology (VITA)

Mr. Monson stated that there will be a detailed presentation for the Board Meeting in September and he asked the Board to let him know what information is needed to help the Board make an informed decision about beginning the regulatory process.

Dr. Gokli commented that back in 2006, the Board was given 3 choices in regard to adjusting fees and asked if the Board will have options to look at in September. Mr. Monson replied that options would be available and Ms. Ryals assured the Board that the year end figures for FY09 will also be available.

Dr. Zimmet asked what the impact would be on the revenue and expenditures when the Board begins collecting disciplinary costs. Ms. Ryals said that the agency did do an impact statement and the impact would be minimal. Ms. Reen stated that the Board can not collect the fee until the regulatory process is completed so there will be no impact in the near future.

Dr. Hall asked if there are cost estimates available on each level of the investigative process. Ms. Reen responded that Enforcement tracks the number of hours spent on each case. She also commented that the Board has not been in the black since she has been with the Board.

#### **DENTAL ASSISTANT APPRENTICESHIP PROGRAM:**

Ms. Reen introduced Beverley Donati, Director Registered Apprenticeship of Department of Labor and Industry, and Ms. Westerman, Director of Apprenticeship Relation of Virginia Community College System (VCCS) who had contacted her about their apprenticeship program when they heard the Board is working on regulations for Dental Assistants II. Ms. Reen said she invited them to present their program for dental assistants to the Board.

Ms. Donati spoke about the value of registered apprenticeships and asked the Board for its support of this program. Ms. Donati reviewed the information package on apprenticeships, noting that the program provides a minimum training standard which is used throughout the U.S. and in some foreign countries. Ms. Westerman explained that this program provides a framework for training and offers a career pathway to take people as far as they want to go. Ms. Westerman went on to say that VCCS offers the courses required to complete apprenticeships, noting that the requirements are driven by the industries and employers who participate.

Dr. Gokli commented that it sounds very impressive. Dr. Zimmet asked if this program lasts for 2 years. Ms. Donati replies it is a 2000 hours or 1 year program. Ms. Ryals asked Ms. Donati and Ms. Westerman what they would like the Board to do. Ms. Donati asked the Board to support

the Apprenticeship concept. Ms. Pace move to support the concept. The motion was seconded and passed.

## **REPORTS:**

**Board of Health Professions (BHP),** Dr. Gokli said she was not able to attend the last meeting and went on to say that Dr. Zimmet is now representing Dentistry on the BHP.

**AADE** – Dr. Gokli reported that she attended the AADE Mid-Year meeting in Chicago from April 5-6. She commented that interest in having a national exam was discussed then voted on as being a priority for action. She said it was adopted as a priority with a 65% vote in favor. She commented that it was a hand raise vote, that some states had more representatives present than others, and that she wished that the voting was done by state role call. She went on to report on the discussion of the following issues:

- Leadership of the profession in serving the public and not ourselves.
- The effects of the economy on dental education which touched on subjects such as the need to reach out in the community, making the schools green, and utilizing basic science faculty.
- Communication between dental associations, schools, and state boards to figure out the needs in the community and ways to work together to address them.

Dr. Gokli recommended that at least 2 people should be going to these high level meetings due to the voting system. Dr. Zimmet added that at least one representative should attend the upcoming AADE annual meeting.

Dr. Gokli noted the information provided in the agenda materials on AADE's "Sexual Boundary Issues" continuing education course. She explained that it addresses the importance of respecting sexual boundaries in the practice of dentistry. Ms. Reen commented that it is a new resource that special conference committees might use.

**Executive Committee Meeting.** Dr. Gokli reported that the Executive Committee met this morning and addressed the Discussion Draft of Standards for Professional Conduct in the Practice of Dentistry. She commented that the draft is still under discussion and she hoped that it will be ready for the September meeting.

**Regulatory/Legislative Committee.** Dr. Watkins asked if there were any questions about the information in the April 22, 2009 Draft Minutes of the Committee meeting. He reported that the Committee is working on a guidance document of what Dental Assistants I can do and the next Committee meeting will be July 1, 2009.

**SRTA.** Dr. Watkins reported that he did not attend the SRTA meeting at MCV but there will be a conference call next week. He said that the fee will be slightly increased, it is not finalized yet. He went on to state that the SRTA annual meeting is coming up from August 6-9, 2009 in

Biloxi, Mississippi. Ms. Reen said she would clarify how many people SRTA will reimburse to go to the meeting and asked if any Board member is interested in going to please let her know.

## **LEGISLATIVE AND REGULATION:**

Ms. Reen reported that Elaine Yeatts could not attend this meeting so she would introduce the agenda items.

**Petition for Rule-making – Robert J. Haddad.** Ms. Reen stated the petition has been published, public comment is open until July 22, 2009 and the Board will act on the petition at its September meeting.

**Petition for Rule-making by Len Futerman, DDS.** Ms. Reen asked the Board to either accept or reject the petitioner's request to amend regulations for anesthesia in dental office for consistency with the 2007 guidelines of the American Dental Association. Dr. Zimmet moved to deny the petition because the current regulations are adequate to protect the public. The motion was seconded and passed.

**Registration of Dental Assistants II.** Ms. Reen stated that the proposed regulations are presented for adoption to submit for administrative review and then for public comment. Dr. Watkins asked that section C on page 46 be changed because dental assistants are allowed to place amalgam now. Discussion of 18VAC60-20-230(C) followed and three changes were adopted by motion of Dr. Hall:

- the words "placing" and "polishing" were deleted from the provision on amalgam restorations in section C1
- In the first line of (C), after the phrase "The following duties may" the word 'only' was added.

Dr. Zimmet moved adoption of the proposed regulations as amended. The motion was seconded and passed.

**Mobile Dental Clinics.** Ms. Reen reported the proposed emergency regulations are presented for adoption, noting that the regulations must be effective no later than January 12, 2010. Dr. Pirok commented that he is concerned for patients who have received partial treatment, where they will go next. Dr. Pirok asked if dentists are mandatory reporters for child abuse. Mr. Casway replied that dentists are not mandatory reporters and advised the Board to adopt the emergency regulations as presented then make any amendments in the final regulation. Staff was asked to research the provisions for reporting child abuse. Ms. Howard moved to adopt the Mobile Dental Clinics emergency regulations. The motion was seconded and passed. Dr. Hall moved to strike the word 'emergency' from section B1 of 18VAC60-20-332. The motion was seconded and passed. Ms Howard moved to adopt the regulations as amended and to issue a Notice of Intended Regulatory Action for final regulations. The motion was seconded and passed.

**NOIRA for Disciplinary Action Cost Recovery** – Ms. Reen reported that the Board needs to adopt the Notice of Intended Regulatory Action to address the assessment of costs related to investigating and

monitoring licensees disciplined by the Board as permitted by §54.1-2708.2 of the Code. The NOIRA addresses the costs to be assessed, how the costs will be determined, the process for assessment and the possible waiver of costs. Dr. Petticolas moved to approve the NOIRA. The motion was seconded and passed.

## **BOARD**

### **DISCUSSION/ACTION:**

**Code of Conduct for Board Members.** Dr. Levin stated that the Executive Committee approved the proposed guidance document for presentation to the Board. He explained that the Code is recommended to help new members understand their role and responsibilities. Discussion followed and three changes on page 55 were agreed to as follows:

- The word “rescuing” was changed to “recusing” in the third bullet
- The phrase “turning off electronic equipment” was changed to “silencing personal devices” in the seventh bullet, and
- The eleventh bullet on eating and drinking during meetings was deleted.

Dr. Hall moved to adopt the Code as amended. The motion was seconded and passed.

**Disciplinary Case Consultant’s Evaluation.** Dr. Levin said he wanted the Board to consider having sources/patients in cases evaluated by dentists to assess the dental care provided, as is done in Georgia. He commented this is another way to determine if the allegations of mistreatment are true. Mr. Casway commented that the Board retains experts to review cases and he questioned establishing an expectation that patients should be examined as part of an investigation. Dr. Pirok asked how an “expert evaluator” is different from an Agency Subordinate. Ms. Reen responded that Agency Subordinates do not examine patients, they make case decisions instead of a Special Conference Committee. Dr. Zimmet suggested that Dr. Levin do more research and present it to the Board in September. Dr. Gokli tabled the matter.

**CODA Letter about VCU Endodontics Program.** Ms. Reen advised that this material was provided as information only.

**Letter from Discus Dental.** Dr. Gokli advised that this material was provided as information only.

**Letter from White Smile.** Dr. Gokli advised that this material was provided as information only.

**Automatic Electronic Defibrillators (AED)** – Dr. Levin stated that dental offices should be required to have AEDs device, it is like the second insurance policy, then moved to require an AED in a dental office within 5 years of enactment. Dr. Pirok commented that there needs to be information provided on the need for equipment before it is mandated. Ms. Mesimer agreed. Dr. Levin withdrew the motion and Dr. Gokli referred this subject to the Regulatory-Legislative Committee.

**Antibiotic Pre-medication of Orthopaedic Patients.** Dr. Pirok reviewed the materials he received about prosthetic joint infections and the risk factors for infections which includes consideration of pre-medication for dental procedures.

**DENTISTRY'S  
ADMINISTRATIVE  
PROCEEDINGS:**

James Banning, Director of the Administrative Proceedings Division (APD) of DHP commented that the Board has done a great job in clearing out old cases, screening cases, recognizing secondary issues and requesting more investigation before forwarding cases to APD, all of which gives APD a more complete picture of the issues to be addressed in notices. Mr. Banning thanked Board members for their hard work. Dr. Zimmet asked if APD would call the Board reviewer to discuss case issues. Mr. Banning replied that APD will contact Board staff if there are questions. Dr. Pirok commented that he often has to call staff for additional information. Dr. Levin suggested that APD try to frame allegations differently so that the Board is not boxed in during hearings. Mr. Banning expressed appreciation for the suggestions and encouraged reviewers to note relevant details in a case to facilitate development of accurate allegations.

**REPORT ON CASE  
ACTIVITY:**

Mr. Heaberlin reviewed the report he distributed addressing the status of the 190 open cases as of June 1, 2009. He indicated that the Board currently has 12 cases older than 365 days and that several of these cases will be closed by June 30, 2009. He went on to say that in the current quarter, April 1 – June 30, 2009, the Board closed its last case that was over 2000. He said the closure of these old cases will cause a dip in the Board's performance on the 250 day measure for this quarter. He also indicated that as of June 1, 2009, the Board has 70 cases in the Probable Cause stage and noted that these cases include cases being reviewed, ones where more information has been requested from Enforcement, cases that have gone to a second reviewer, and cases that are being offered Confidential Consent Agreements. He thanked the Board for all their hard work.

**EXECUTIVE  
DIRECTOR'S  
REPORT/BUSINESS:**

Ms. Reen reported that the Department of Health (VDH) is working on the protocol for their dental hygienists to practice under remote supervision as authorized by new legislation. She noted that she has been included in the workgroup which is developing the policies that will guide the provision of dental hygiene treatment in this pilot program which will be implemented in three health districts. Ms. Reen stated that more information will be available for the September Board meeting.

**Proposed 2010 Calendar** – Ms. Reen stated that this calendar has been sent to all Board members for review and that changes were made in the September schedule. She asked that the calendar be



adopted. Dr. Levin move to adopt the 2010 calendar. The motion was seconded and passed.

**BOARD COUNSEL  
REPORT:**

Mr. Casway stated that Dr. Leidy's case is closed and he has nothing new to report.

**ADJOURNMENT:**

With all business concluded, the meeting was adjourned at 3:01 p.m.

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Meera A. Gokli, D.D.S., President

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Sandra K. Reen, Executive Director

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Date

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Date